

## **PROBATE AND ESTATES-GENERAL RULES**

### **RULE 1**

All probate rules and regulations promulgated by the Veterans Administration are hereby adopted as probate rules of the Court.

### **RULE 2**

Probate matters must be transacted with the Probate Commissioner. Only emergency matters may be submitted to the presiding Judge. Telephone calls or visits to the Probate Commissioner's private office should be kept at a minimum.

### **RULE 3**

Attorneys must obtain sheets and jackets from the Probate Clerk prior to submitting any matter to the Probate Commissioner.

### **RULE 4**

All petitions, of any nature or kind, in all matters, must be executed and verified by the Personal Representative, the Guardian, the Trustee, or the Interested Party (Petitioner), and not by the Attorney.

### **RULE 5**

All Attorneys are required to prepare CCS Entry Forms showing each pleading filed, and setting forth all necessary matters for all proceedings. The Standard entries are to be used when applicable.

### **RULE 6**

All Attorneys are required to prepare orders per form for all proceedings, except where expressly indicated to the contrary by the respective Probate Commissioner.

### **RULE 7**

Where matters are filed by mail, or left with the Court for filing, a self- addressed stamped envelope must be included for return of documents to the Attorney.

#### RULE 8

Routing matters, such as Inventories, Inheritance Tax Schedules and Final Report, may be filed with the Probate Clerk or Probate Secretary for transmittal to the Probate Commissioner.

#### RULE 9

Attorneys desiring to have the Court Reporter present for a hearing must make a written request for same ten (10) days in advance of the hearing. Hearings involving the Court Reporter shall be set subject to his or her availability.

#### RULE 10

Any contested matters scheduled for hearing on a probate day shall take precedence over unscheduled business. Attorneys are encouraged to call the Court to find out when contested matters are scheduled.

#### RULE 11

Whenever notice by publication and/or written notice by U.S. Mail is required to be given, the Attorney shall prepare such notice and shall ensure that such notice is properly published and/or served by certified mail, return receipt requested, when required. In all respects it shall comply with all statutory requirements. It shall be the Attorney's responsibility to ascertain and provide adequate proof that notice was properly served prior to bringing a matter to the attention of the Probate Commissioner.

#### RULE 12

Copies of petitions and accountings must be sent with all notices, where the hearing involved arises from the matters contained in the petition and/or accounting.

#### RULE 13

Unless waived, all other notices shall be given in strict conformity with statutory requirements and proof of such service in proper form must be presented to the Court at the time of the hearing.

#### RULE 14

An inventory must be filed in all Estate and Guardianship matters as follows: Estates, within 60 days; Guardianship, within 90 days for permanent guardians, or within 30 days for temporary guardians. All times relate to the date of appointment.

#### RULE 15

In all instances in which real estate is to be sold, a current written appraisal setting forth the fair market value thereof must be filed with the Court no later than at the time of the filing of the Petition seeking such sale.

#### RULE 16

Attorneys must attend the hearings on current or final accounts on the date scheduled for such hearings. The Court may, in its discretion, require the attendance of the Personal Representative, Guardian or Trustee at all such hearings.

#### RULE 17

Hearings on final reports shall be scheduled on the last probate day of each week.

#### RULE 18

In all reports made to the Court, vouchers for the expenditures claims therein must be filed therewith, or in the alternative, at the discretion of the Court, an affidavit stating that vouchers are available for all such items may accompany said report.

#### RULE 19

Receipts for all final distribution must be filed either in the final report, or a supplemental report, before discharge will be given by the Court.

#### RULE 20

All Accountings must follow the prescribed statutory format. Informal, hand- written, or transactional accountings will not be accepted.

#### RULE 21

The Social Security number of the Personal Representative or Guardian must be provided to the Court at the time of opening an Estate or Guardianship.

#### RULE 22

The name and address of the Insurance Agency providing the corporate surety must be typed on all corporate bonds filed in any Estate or Guardianship.

#### RULE 23

In all contested hearings, Indiana Rules of Procedure, Trial Rule 16, Pre- Trial Procedure, as modified by Order of the Court, shall be strictly enforced.

#### RULE 24

Any petition for the allowance of fees for the Attorney and/or the Personal Representative or Guardian shall specifically set forth all services performed in detail as well as the amount of the fee requested. At the time the Petition is considered by the Court, the Attorney must be present. No fee request will be considered as a part of the Final Account in any Estate or Guardianship proceedings. A separate petition must be filed requesting such fee determination. No fee, in any proceeding, whether in whole or in part, shall be paid without the prior approval of the Court.

#### RULE 25

All Deeds submitted to the Court for approval in either Estate or Guardianship proceedings must be signed by the Fiduciary and the signature notarized prior to its submission. All such Deeds are to be submitted with the Report of Sale of Real Estate or at the time of hearing on the Final Account. Copies of such Deeds must be filed for the Court records.

#### RULE 26

In all settlement proceedings, whether wrongful death, minor's settlement, or incapacitated person's settlement, the Personal Representative, one Custodial Parent, or the Guardian must be present at the time the settlement is presented to the Court for approval. The Court retains the right to require the presence of the minor or incapacitated person at such times.

#### RULE 27

For good cause shown, the Court may waive any local procedural rule.

## **ESTATE RULES**

### **RULE 1**

When required by law, all Wills must be admitted to Probate.

### **RULE 2**

Bond procedures for Estates:

- a. If the decedent's Will provides for no bond, the Court may honor the request;
- b. If all heirs request no bond or a minimal bond, the Court may honor such request;
- c. In all instances, upon petition by an interested person, the Court may require a bond to protect creditors, heirs, legatees, or devisees;
- d. In all other situations, the Court will determine and set the amount of the bond and in no event shall it be less than that required to protect creditors and taxing authorities;
- e. Personal surety must meet the requirements of I.C. 29-1-11-5;
- f. No Attorney will be accepted as surety on any bond required to be filed in Court.

### **RULE 3**

Five (5) months and fifteen (15) days after the date of the first published notice to creditors, the Personal Representative, or his Attorney, shall examine the Claim Docket and shall allow or disallow each claim filed against the Estate.

### **RULE 4**

If an Estate cannot be closed, the Personal Representative must report the condition of the Estate to the Court one year after the date of his appointment, and thereafter every year until the Estate is fully administered.

### **RULE 5**

Inheritance Tax Schedules must be filed in triplicate, with copies of the Decedent's Will attached, if there is one.

## RULE 6

Proposed Orders Determining Inheritance Tax Due in the format prescribed by the Indiana Department of Revenue shall be prepared by the Attorney and filed in quadruplicate at the time of determination of the Tax.

## RULE 7

Unless notice is waived on the Inheritance Tax Schedule, the Personal Representative and/or his Attorney, must attend the hearing to determine inheritance tax.

## RULE 8

Although not required by law, the Federal Estate Tax Closing letter and/or the countersigned receipt, or a photocopy thereof, showing payment of the Indiana Inheritance Tax liability in the Estate, executed and sealed by the Indiana Department of the State Revenue, should be attached to the Final Report at the time of filing.

## RULE 9

No Attorney or Personal Representative fees will be authorized for payment until the Estate is substantially settled.

## RULE 10

Proof of publication of all notices required to be published shall be filed with the Court by the Attorney for the Estate. It is the Attorney's responsibility to ensure that publication was timely made, and proof thereof is properly filed with the Court.

## RULE 11

It shall be the responsibility of the Attorney and/or the Personal Representative to provide notice of the opening of the Estate to any reasonably ascertainable creditor.

## RULE 12

No Attorney or Personal Representative fees will be determined and authorized for payment by the Court in any Unsupervised Administration of a Decedent's Estate.

### RULE 13

Any Attorney or Personal Representative fees determined to be due by reason of jointly held assets shall be assessed against the owner of the jointly held asset.

### RULE 14

The Court shall have no involvement, other than for opening, closing and determining Indiana Inheritance Tax due in an Unsupervised Administration of a Decedent's Estate. If the jurisdiction of the Court is invoked for any other matter, the administration shall become a supervised administration from there on for all remaining matters.

### RULE 15

When a verified closing statement has been filed, an affidavit executed by the Personal Representative stating that no proceedings are pending shall be filed with the Court upon the expiration of the three month statutory waiting period.

### RULE 16

If the Personal Representative has filed a claim in the Estate, the claim may be allowed by the Court if all interested parties have consented thereto. In the event the consents have not been obtained, a hearing on the claim will be held as prescribed by statute.

### RULE 17

In the event a petition is filed requesting that an Estate be closed as insolvent, a hearing shall be held thereon. Notice shall be given to the Lake County Assessor, all interested parties, all claimants and all reasonably ascertainable creditors.

### RULE 18

Where contracts for legal services have been entered into prior or subsequent to the opening of an Estate without prior Court approval, the Court reserves the right to approve or disapprove the fee contracts consistent with fee guidelines and/or Court policy.

## FORM 1

Petition filed for Letters of Administration for Estate of \_\_\_\_\_, Deceased. Petition examined. Court now finds \_\_\_\_\_, Deceased, died on \_\_\_\_\_, a resident of Lake County, Indiana, leaving property therein. Court appoints \_\_\_\_\_ as Personal Representative of the Estate. Personal Representative files Oath and Bond, examined and approved. Letters ordered issued.

## FORM 2

Instrument produced for Probate purporting to be the Last Will of \_\_\_\_\_, Deceased. Petition filed for Probate of Will and Issuance of Letters. Instrument examined. Evidence of \_\_\_\_\_, attesting Witness, submitted and reduced to writing by filing Proof of Will. Court now finds \_\_\_\_\_, Deceased, died on \_\_\_\_\_, a resident of Lake County, Indiana, leaving property therein. Will admitted to Probate. Court appoints \_\_\_\_\_ as Personal Representative. Personal Representative files Oath and Bond, examined and approved. Letters ordered issued.

## FORM 3

Instrument produced for Probate purporting to be the Last Will of \_\_\_\_\_, Deceased. Petition filed for Probate of Will. Instrument examined. Evidence of \_\_\_\_\_, attesting Witness, submitted and reduced to writing by filing Proof of Will. Court now finds \_\_\_\_\_, Deceased, died on \_\_\_\_\_, a resident of Lake County, Indiana, leaving property therein. Will admitted to Probate.

## FORM 4

Instrument produced for Probate purporting to be the Last Will of \_\_\_\_\_, Deceased. Petition filed for Probate of Will. Instrument examined. Court finds that the Last Will of the Decedent was a self-proved Will executed in all respects according to law with proper acknowledgement and verification thereof. Court now finds that \_\_\_\_\_, Deceased, died on \_\_\_\_\_, a resident of Lake County, Indiana, leaving property therein. Will admitted to Probate.

## FORM 5

Petition filed for Appointment of Personal Representative for the sole purpose of collecting damages for wrongful death. The Court being advised, now appoints \_\_\_\_\_ as Personal Representative of the Estate of \_\_\_\_\_, who died on \_\_\_\_\_, a resident of Lake County, Indiana, for the sole purpose of bringing

action for damages for wrongful death. Personal Representative files Oath and Bond, examined and approved. Letters ordered issued.

#### FORM 6

Personal Representative files Oath and Bond. Examined and approved. Letters ordered issued.

#### FORM 7

Inventory submitted showing personal property with a value of \$\_\_\_\_\_, and real property with a value of \$\_\_\_\_\_. Examined and approved.

#### FORM 8

Personal Representative files Petition to Sell Real Estate. Court sets hearing on Petition for \_\_\_\_\_, 199\_\_, at \_\_\_\_\_ a.m./p.m.

#### FORM 9

Due Notice, as provided by law, has been given. Evidence submitted. Court orders real estate sold.

#### FORM 10

Personal Representative files Petition to Sell Real Estate. All necessary waivers and consents filed. Evidence submitted. Court orders real estate sold.

#### FORM 11

Personal Representative files Report of Sale of Real Estate and Deed for approval. Evidence submitted. Court now approves Report of Sale and Personal Representative's Deed.

#### FORM 12

Schedule of All Property for Inheritance Tax Purposes filed. Referred for appraisal.

### FORM 13

County Assessor files Report of Appraisers. State Tax Board and County Treasurer show Waiver of Notice. Submitted, examined and approved. Court now finds tax due in the amount of \$\_\_\_\_\_.

### FORM 14

Personal Representative files Petition for Allowance of Personal Representative and Attorney Fees. Evidence submitted. Personal Representative fees allowed in the amount of \$\_\_\_\_\_, and Attorney's fees allowed in the amount of \$\_\_\_\_\_.

### FORM 15

Personal Representative files Petition to Allow and Settle Final Account. Court sets hearing on Petition for \_\_\_\_\_, 199\_\_, at \_\_\_\_\_ a.m./ p.m.

### FORM 16

Due Notice, as provided by law, has been given. The Final Account is hereby in all things approved, settled and confirmed. The distribution of assets, as set forth in the accounting has been made and is hereby approved. The Personal Representative is hereby released and discharged from any further liability or responsibility. Surety released and discharged. Estate ordered closed.

### FORM 17

Due Notice, as provided by law, has been given. The Final Account is hereby in all things approved, settled and confirmed. The Personal Representative is hereby directed to make distribution as provided for in the Final Account and file Supplemental Report showing the distribution to have been made.

### FORM 18

Personal Representative files Supplemental Report showing distribution has been made as provided in the Final Account. Petition examined and approved. The Court now orders Personal Representative discharged. Surety released and Estate ordered closed.

FORM 19

Personal Representative files Verified Closing Statement. Court sets \_\_\_\_\_, 199\_\_, at \_\_\_\_\_ a.m./p.m., as the last date for filing objections thereto.

FORM 20

This matter comes for hearing on the Verified Closing Statement previously filed herein, and there having been no objections filed thereto, the Court now orders the Estate closed.

FORM 21

Comes now \_\_\_\_\_ and files Petition for Transfer of Assets by Affidavit. Court being advised, now finds that the requirements of I.C. 29-1-8-1 have been satisfied. Court now orders transfer of assets by Affidavit.

FORM 22

Comes now \_\_\_\_\_, Attorney General of Indiana, by \_\_\_\_\_, Deputy Attorney General, and files appearance on behalf of Indiana Department of Revenue, Inheritance Tax Division, and also files Petition for Rehearing, Reappraisement and Redetermination of Inheritance and Transfer Tax. Court now sets hearing on the Petition for \_\_\_\_\_, 199\_\_, at \_\_\_\_\_ a.m./p.m.

## **ATTORNEY FEE GUIDELINES-PROBATE**

### **INTRODUCTION**

Although fee guidelines have been promulgated by the Court for Probate and Guardianship matters, it is important that certain criteria be called to your attention as they pertain to these guidelines.

The existence of these guidelines does not assure that all fees allowed by the Court will adhere to them. Other factors must be considered by the Attorney and his, or her, Client. These same factors will also be considered by the Court in making its determination.

The criteria to be considered include the following:

A. The time and labor required; the novelty, complexity, or difficulty of the questions involved and the skill required to perform the services properly. This shall include a determination as to how much of the Attorney's time was devoted to legal matters and how much of it was devoted to ministerial functions;

B. The nature and extent of the responsibilities assumed by the Attorney and the results obtained. Included herein are considerations of the identity of the Personal Representative and the character of the probate assets and non- probate transferred assets;

C. The sufficiency of assets properly available to pay for legal services. Inherent herein is whether the Attorney's duties are expanded by the existence of non-probate assets because of their inclusion for tax purposes, both federal and state;

D. The timeliness with which the necessary services are performed consistent with statutory requirements, the Court's Rules of Procedure and the Rules of Professional Conduct applicable thereto.

In considering all of these factors, Attorneys are urged to discuss their fee and that of the Personal Representative or Guardian at the time they are retained in all Probate and Guardianship matters.

## **MAXIMUM FEE GUIDELINES AND RULES--ESTATES**

### **ATTORNEY**

A. Regular Administration

1. \$200,000 or less:

Basic	\$800
Gross value of estate	6%
Sale of real estate	\$600
All other services, \$125 per hour, if assets warrant [FN*]	

2. Over \$200,000:

Gross estate up to \$200,000	6%
\$200,000 to \$400,000	4%
\$400,000 to \$800,000	3%
Over \$800,000	2%
Sale of real estate	\$600
Federal Estate Tax Return, basic fee to be charged, but only if the attorney drafted and signed the return as the actual preparer	\$1,500
Federal Estate Tax assets which exceed assets in Inheritance Tax Schedule	1%
All other services, \$125 per hour, if assets warrant [FN*]	

B. Wrongful Death Administration

If settled before trial	33
	1/3%
If trial	40%
If appealed	50%

[FN\*] Fees will be computed on an hourly basis only for extraordinary services or for services not specified above. Fee petitions requesting extraordinary fees must set forth services rendered with specificity, including the amount of time required to perform these services.

When a contract for legal services has been entered into prior or subsequent to the opening of an Estate, and when a settlement has been reached, the court reserves the right to approve or disapprove such fee contracts consistent with fee guidelines and/or court policy.

PERSONAL REPRESENTATIVE

Non-Professional: One-third ( 1/3 ) of the attorney fee. If unusual services add at \$10 per hour if assets warrant.

Professional: Their applicable reasonable rate to be reviewed in light of all circumstances.

The total fees allowed to the Personal Representative and attorney shall not exceed ten percent (10%) of the decedent's gross estate.

## MAXIMUM FEE GUIDELINES AND RULES--GUARDIANSHIPS

### ATTORNEY

Appointment of Guardian (plus Inventory)		\$625
Biennial Current Report	\$500	
Sale of Real Estate	\$600	
Petition	\$250	
Final Report and closing Guardianship		\$500
All other services, at \$125 per hour, if assets warrant [FN*]		

[FN\*] Fees will be computed on an hourly basis only for extraordinary services or for services not specified above. Fee petitions requesting extraordinary fees must set forth services rendered with specificity, including the amount of time required to perform these services.

When a contract for legal services has been entered into prior or subsequent to the opening of a Guardianship, or when a settlement has been reached and no Guardianship is required, Court reserves the right to approve or disapprove such fee contracts consistent with fee guidelines and/or Court policy.

### GUARDIAN

Non-Professional: The greater of five percent (5%) of the income derived (excluding original assets; sale of assets; exchange of assets);

OR

One-half of one percent (.005%) of the gross estate per annum.

If unusual services, add at \$10.00 per hour if assets warrant.

Professional: Their applicable reasonable rate to be reviewed in light of all circumstances.

## MAXIMUM FEE GUIDELINES AND RULES--TRUSTS

Fees will not be determined by the Court in Trust matters, other than at the discretion of the Court for services actually rendered in Court proceedings.